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Gittenden, John J. (of Kentucky)  
Speech in the Senate  
of the U. S.

Washington 1858



Class F685

Book . C931

SMITHSONIAN DEPOSIT





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KANSAS---THE LECOMPTON CONSTITUTION.

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S P E E C H

OF

HON. JOHN J. CRITTENDEN,

OF KENTUCKY;

IN THE SENATE OF THE UNITED STATES,

MARCH 17, 1858.

[CORRECTED BY HIMSELF.]



ex.  
WASHINGTON, D. C.

C. W. FENTON, PRINTER, AMERICAN OFFICE.

1858.





## SPEECH OF MR. CRITTENDEN.

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*The Senate having under consideration the bill to admit Kansas into the Union as a State—*

Mr. CRITTENDEN said:

I feel how inadequate I am, Mr. President, to add anything to the various arguments that have been employed on this subject during the long discussion through which we have passed; and yet I should not perform my duty, according to my views, if I omitted to express my sentiments and feelings on the subject before the Senate. I do not intend to occupy your time with exordiums, sir. *The right of the people to govern themselves is the great principle upon which our Government and our institutions all depend.* It seems to me that this great principle is involved in the present subject.

The President of the United States communicated to us an instrument called the constitution of the people of the Territory of Kansas, and he has, with unusual earnestness, advised and recommended to us to admit Kansas under that constitution, as a State into this Union. The question, as it has presented itself to my mind, involves an inquiry as to the matters of fact bearing upon this instrument of writing, and whether these authorize us to regard this instrument as the constitution of the people of Kansas. Is it their constitution? Does it embody their will? Does it come here under such sanctions that we are obliged to regard it, or ought to regard it, as the permanent, fundamental law and constitution of this new State? I do not think it comes with such a sanction, or ought to be regarded as the constitution of the people of Kansas. Sir, I shall not occupy your time long on this point.

What are the evidences that it is so? It is made by a convention, to be sure, called under the authority of an act of the Legislature of Kansas. It is made by delegates regularly elected by this people, and *prima facie* it would appear that it had the sanction of the people of Kansas; but I think there are evidences of a higher character to show that it is not so, that it is but in appearance a constitution, and not in reality.

In the first place, the fact is established beyond all controversy that an overwhelming majority of the people of Kansas are opposed to this instrument as their constitution. The two highest officers of the Federal Government lately there under appointment from the President of the United States, Governor Walker and Secretary Stanton, both assure us of that fact upon their personal knowledge. That is high evidence to establish the

fact that it is against the will of an overwhelming majority of the people upon whom it is to be imposed as a constitution.

That constitution in part was submitted to the people. I shall not stop now to inquire how it was submitted, whether fairly or not. A part of it was submitted, however, and, upon a vote taken by the people on the clause thus submitted, it received six thousand votes, and a little more. These are the sanctions with which it comes to us. To this extent, it would seem to have the popular approbation. But, sir, when you come to look a little further into the investigations which have taken place in that Territory, it appears that of those six thousand votes, about three thousand were fictitious and fraudulent. That is reported to us by the minority reports of our Committee on Territories; that is verified to us by the proclamation issued by the President of the Council and the Speaker of the House of Representatives of the Territorial Legislature of Kansas. These high officials, who were invited by Mr. Calhoun to witness the counting of the votes which were returned to him, certify from their personal knowledge that more than two thousand of the three thousand votes which were given at three precincts in the counties of Johnson and Leavenworth were fictitious votes. I only call your attention to this in order that it may appear truthfully who it was that approved of this constitution.

That vote was taken on the 21st of December. Before that vote was taken, however, a Legislature, which was elected in October last, and which met on the call of the acting Governor, Mr. Stanton, in December, passed an act postponing that vote from the 21st of December to the 4th of January. On the 4th of January, under the provisions of that act, a question was taken upon the constitution itself broadly. It provided that the question should be taken upon the Lecompton constitution with slavery, upon the Lecompton constitution without slavery, and generally upon the constitution itself. Upon that occasion, over ten thousand voted against the constitution; and the Legislature of the Territory of Kansas have passed resolutions unanimously protesting against the reception by Congress of this instrument as the constitution of the State, declaring that it was obtained by fraud, and that it has not the sanction or concurrence of any, except a small minority of the people. This is the substance of their resolutions.

Now, I ask you, sir, upon this evidence, as a

judge, to say whether this is the constitution of the people of Kansas or not? whether the evidence before you is that it is an instrument, signifying their will and declaring that general and permanent law upon which they wish their government to be founded? Unless you shut your eyes to the vote taken on the 4th of January, here is a direct popular evidence and protest against the constitution; and, even supposing the whole of the six thousand votes which were given for it on the 21st of December to be true and real votes, fairly expressed, it shows that there were ten thousand other people in the Territory of Kansas who are opposed to this instrument and who have legitimately declared their opposition. Here is the solemn act of the Legislature of the Territory protesting against it. These are recorded evidences, as much so as the constitution itself is a record, having the same legal sanctions and the same legal title to our faith and our confidence. How are you, in law, to make any difference between these testimonials; to say that you will give effect to one and will reject the other; that you will give effect to that which testifies for the minority of the people, and will reject that which testifies for the majority of the people; that you will accept that which was first given, and reject the last expressions of the popular will?

It is these last expressions of the popular will that ought to govern on every principle, just as much as that a former law must yield to a subsequent law in any point of conflict between them. The last evidence, then, is the vote of the people on the 4th of January, of ten thousand against it; and the evidence nearly contemporaneous with that are the resolutions of the Legislature of Kansas, protesting and imploring you not to accept this instrument, that it is a fraud and an imposition upon them. I want to know why it is that this evidence is not entitled to our consideration and to have effect? The President, it seems to me, has given us a most unsatisfactory reason. The President says that in recommending the adoption of this constitution to us, as implied in the admission of the State, he has not overlooked the vote of ten thousand against the constitution given upon the 4th of January; he has considered it; but he holds it, and he holds the law of the Territorial Legislature under which that vote was taken, to be mere nullities. Why? The law was passed by the regularly elected Legislature of the Territory providing that a vote should be taken on that day; and why not? Is there anything in the organic law, is there anything anywhere that forbids it? No; nothing.

The President had anticipated that the constitution itself, in whole, and not in part, was to be submitted to the people. The Governor had so contemplated, and had so assured and promised the people. The President regrets that it was only submitted in part. He regrets that the entire constitution was not submitted. Though he accepts as an equivalent the partial submission, he regrets that it was not submitted as a whole.

The Territorial Legislature, after this constitution was published, immediately passed a law to have a vote taken upon the entire constitution—the very course which the President had preferred, and to which Mr. Walker pledged himself. What

do they do but carry out and act in perfect accordance with the wishes and opinions of the President and Governor? And yet the President, who was for a general submission, and would have preferred it, says the act of the Legislature, in accordance with his opinion, is a mere nullity. Why? Because, he says, by the previous acts of the people and of the territorial government the Territory was so far prepared for admission into the Union as a State. That is the reason. He gives no application of it, but announces as a reason that it was so far prepared because the constitution had been made, ready to be offered to Congress, though that constitution had not yet been submitted to the people when this law was passed. That was her condition; that was the preparation she had made. The only preparation was, that under the authority of a previous Territorial Legislature, a convention had been held, and a constitution made and published.

That was the condition of her preparation; and, because of that preparation, the President says that the Territorial Legislature had no power whatever to pass a law to take a popular vote upon the adoption of that constitution, to see what the people thought of it; to collect the evidence of the public will! What could the Territorial Legislature do, to satisfy themselves, to satisfy the country, to satisfy the just rights of the people, but to say a vote shall be taken on the 4th of January next, in which all the people shall declare their assent to, or disapprobation of, this constitution as an entire instrument? What is there in the preparation above referred to to prevent it? What force had the constitution? Could the constitution, unaccepted by you, unauthorized by you, paralyze and annihilate the legislative power which your act of Congress had conferred upon the territorial government? Does not that power, and all that power, remain as perfect as when you granted it? And could the power which your act gave be diminished or lessened by any act of mere territorial authority? It is palpable that it could not. No matter what act might be done by the people of Kansas, call it by what name you please—law of the Territorial Legislature, constitution made by the people—no matter by what name you call it—the supremacy of the Government of the United States remains untouched and unimpaired, and all the power of territorial legislation which it gave may be exercised by the Legislature.

Of what avail is this constitution until accepted by Congress, and the State admitted upon it? Whom does it bind? Is it anything more than a proposition by the people of Kansas that “we shall be admitted with this instrument, which we offer as our constitution?” What more is it? Does it bind anybody? Where does it derive its authority? The organic law authorized no legislation by a convention. The convention could exercise no legislative power which Congress had given, because Congress gave its power to a Territorial Legislature, to be elected in a certain manner, and to be exercised in a certain manner. The convention could exercise no legislative power. It bound no one. It did not bind the future State; for, until you accepted it, what prevented the people from calling a convention the next day, and altering or



modifying it according to their own views? Is there anything of reason, of argument, or of law, to support such a proposition as that the people are restrained from making another constitution because they have proposed one not yet accepted and acted upon by Congress? I think not.

In my judgment, we have a precedent which shows I am right in this view of the subject. The case is this: Wisconsin, then under a territorial government, presented herself here with a State constitution, and asked for admission into the Union as a State. Congress admitted her, but on the condition that her constitution should be submitted to a vote of the qualified electors of the Territory—and, if assented to by the people, that the President should announce that fact by proclamation, and that thereupon, and without any further proceedings on the part of Congress, her admission should be complete and absolute. This was the case of Wisconsin; this *her state of preparation*. What, under these circumstances, did the people of Wisconsin do? Did they proceed according to this act of Congress, and submit their constitution again to the people, as required by said act? No, sir; they passed that act by, called another convention, applied to Congress at a subsequent session, and were admitted into the Union as a State.

Was not their state of preparation greater than the preparation of the Territory of Kansas? Here Wisconsin was not only in a state of preparation, by having made a constitution, but that constitution had received the approbation of Congress, and she had been conditionally admitted into the Union as a State. Yet she considered that even under these circumstances, she was at full liberty to avail herself, or not to avail herself, of that *conditional* admission—and concluding not to decline it, she made another constitution, and was thereupon admitted by Congress.

If they could do that, if, prepared as they were, that preparation did not preclude them from making another constitution, how is this less state of preparation, on the part of Kansas, to preclude the Territorial Legislature, not from performing the high act of calling a convention, but simply of taking another vote on a constitution which was yet to be proposed to Congress? Can any reason be shown? No, sir, none. That constitution was, in my judgment, inoperative; and of gentlemen who think differently I would ask, how long would it have operated as binding on the people of Kansas? Suppose circumstances had occurred which had prevented any application to Congress for years, how long would this instrument have retained its vitality and retained its vigor and authority? One year? Two years? Three years? Four years? How long? Suppose the president, Calhoun, had put this instrument in his pocket and kept it there all the days of his life, would it all the days of his life have restrained the people of Kansas from taking other steps and calling other conventions, and making other constitutions?

If its authority would not have continued a lifetime, how long could it continue? No man can set a limit; and the conclusion, therefore, is that it never had any binding influence—at any rate, never such binding influence (and that is all I am

required to show) as to have prevented the people, if they had changed their minds after making the first constitution, from calling another convention, and resorting to all means necessary for the establishment of another constitution, and then to offer it to you. It is theirs to offer, and ours to dispose of, and they are free up to the last moment to make known to Congress what is their will and what is their determination in relation to the fundamental law of the State which they are about to establish.

Is not this all perfectly clear to our reason? Are there any fictions of law; are there any technicalities springing out of these instruments, governing their force and effect, to prevent this conclusion? Is this constitution to be made up into a little plea of estoppel against the people? Are the little rules which we are to gather from Westminster Hall, the little saws in actions at law that do well enough to decide little questions of *meum and tuum* among A, B, and C, to be applied as the measure to those great and sovereign principles on which States and peoples rest for their rights and their liberties? No, sir. This is a great political question, open, free to be judged of according to God's truth and the rights of the people unrestrained, unencumbered, unimpaired by any fiction or by any technicality which could prevent the full scope of your justice and your reason over the whole subject.

Therefore, sir, this state of preparation of the Territory of Kansas for admission into the Union has no effect. The argument is not applied; the fact is merely stated that there is a state of preparation, and there it would be necessary to stop on any doctrine; for, in my own judgment, no argument can be made even of any ordinary plausibility to show that the state of preparation restrains the people of their natural and indefeasible right and their legal right as proclaimed by you, to form with perfect freedom their own institutions before they come into the Union. There is no technicality about it.

Here, it seems to me, applies that great principle to which I adverted at first, that *the people have a right to govern themselves*. I mean, of course, in subordination to constitution and law. This people had no constitution, could have no constitution, while they remained in territorial dependence; and when the act of the Territorial Legislature was passed requiring a vote to be taken on this proposed constitution, they had full authority to pass that law. Their hands were not bound. Here was a great act about to be done, an act to bind the State, to give it a new character, to give it new institutions, to put upon it a constitution—that panoply of the rights of all. This was the great act to be done; it is an act which none but the people can do through themselves or their proper representatives. It is in all cases directly or by reference the act of the people. The laws which they establish are not of that transient character which can be made to-day and repealed to-morrow. They are made for permanency. They are the great immutable and eternal truths and principles on which all government must rest. They are expected to be permanent. The people delegate to others the power of passing temporary and repealable laws. They reserve to themselves the

great right of passing those which are permanent and can only be repealed by themselves.

Was it not of consequence, was it not of importance to know the will of the people, whether they really did approve of this constitution which was about to be offered to Congress—a law which, when Congress puts its *imprimatur* on it by admitting the State, is to be permanent? Would it be any harm to take the vote over and over again, so long as doubt remains? Congress has the power. What objection could there be to it? You may say "It is an unnecessary care of the people's rights; you have had their decision once; therefore, it is not necessary to have it again;" but out of abundant care, and abundant zeal you may choose to take it again and again, and ascertain whether there may be change or variation in the public opinion. Who can say aught against it? Do you object to it because it is taking too great care of public liberty, paying too great respect to popular rights? Nobody will take that ground.

But it may be said you might delay the application to Congress by these repeated elections.—You must avoid that as far as you can. In this case it has not delayed it. In this case this vote was taken before this constitution came before you; while it yet slumbered in the hands of President Calhoun. No objection can be made, then, that this was made the cause of, or intended merely for the purpose of delay. The result shows that it was necessary and proper. The result shows that notwithstanding the vote of six thousand, in favor of it, there were ten thousand who were opposed to it. I say, therefore, this is not the constitution of the people of Kansas. It may in a certain sense be a constitution offered by the convention to the people of Kansas; but which the people of Kansas by ten thousand majority have rejected, have as lawfully rejected in the last vote, as it was lawfully approved by the six thousand first voting in the preceding December.

I say, then, Mr. President, upon the record evidence, upon all the evidence, this is not the constitution of the people of Kansas. It is not the constitution under which they desire that you shall admit them into the Union. Now, will you, against their will, force them into the Union under a constitution which they disapprove? That is the question. You know the fact that ten thousand against six thousand are opposed to the constitution. You know that by the act of their Territorial Legislature they entreat you not to admit them with this constitution. They tell you, moreover, as one of their reasons, not only that they disapprove of the whole constitution, but that it is particularly hateful to them because the votes given for it, or apparently given for it, were, to a great extent, fraudulent and fictitious. The Legislature tells you that nine-tenths of the people there are opposed to it.

Now, would it not be strange, that under these circumstances, we should, without any motive for it that I know of, as the common arbiters of all Territories and States to the extent of our constitutional power, force her into the Union? What motive can we have, what right motive, with the knowledge of these facts, to force her into the Union, and to enforce upon her this constitution?

I cannot feel myself authorized to do such a thing. Of course I do not impugn the motives and the views of others, who, taking a different view, act from impressions different from mine. They act upon one view, and I upon another; but, viewing the subject as I do, it seems to me that to do this is a plain, unmistakable violation of the right of the people to govern themselves.

I have endeavored to show you, sir, that this is not the constitution of the people of Kansas, according to the recorded evidence of their will. It seems to me, furthermore, that this constitution is a fraud. It is not only not their constitution, according to their will, but it is got up and made in fraud, to deprive them of their rights. I believe that, and I think it can be shown.

The President of the United States has furnished us an argument on this subject, and it has been oftentimes repeated here in the debate—of course a plausible and ingenious argument, as all must admit, even those who deny the solidity of the reasoning. What is the argument? The President says that the sense of the people was taken, and proved to be in favor of calling a convention. The convention was called; delegates were elected; those delegates made a constitution; that constitution was submitted to the people in part, and approved by a vote of six thousand, taken according to law. Well, all these, you will observe, constitute a tissue, a long series of little legalities, regularities, and technicalities; and the reasoning of the President is founded on technical points on each of these facts. You must admit all the facts. Yes, sir, the facts are all true; and if they alone constituted the case, the conclusion would be fair and right that this constitution has been regularly made; that this constitution has been sanctioned by the people as well as by the convention. But is there no more in the case than this? There is a great deal more in the case than this.

When frauds have been alleged and charged against this government of Kansas, gentlemen say, "Ah, but these frauds were in other elections; these frauds do not particularly and specifically touch this constitution, or the proceedings which led to this constitution." But suppose there were frauds in relation to it: is it not something if I show you that, in regard to that part of the constitution which was submitted to the people to be ratified by them, and which was nothing until the people had ratified it even according to the constitution itself, there was fraud in that election, and abundance of fraud? So glaring, so impudent, and so fearless had frauds in elections become there, that upon that very poll list, in one of the precincts, (I forget whether it was in Oxford, or Shawnee, or that other precinct that emulates these in its character for fraud, Kickapoo,) you find that the President of the United States, Colonel Benton, and the gentleman from New York, [Mr. SEWARD,] were there, it seems, or fictitious votes were put in for them by somebody, and a long list of persons of that sort of figure on the poll-book at these miserable precincts as actual voters. That was the vote on the constitution on December 21; that was on the part submitted to the people. They were the constitution-making power there, and there I show you the fraud.

What further frauds there were I know not;



but this much is apparent—and later developments show greater frauds still—that in one single precinct, where there were only thirty or forty votes to be taken legitimately, there were over twelve hundred; and under the investigation lately made by commissioners in Kansas, that upon sworn testimony is stated to be the fact. In one precinct there were twelve hundred fraudulent and fictitious votes out of twelve hundred and sixty; seven hundred in another, and over six hundred in another; making in the aggregate twenty-six hundred votes in three precincts, entirely fraudulent and fictitious, written out by hundreds on the poll-book after the election was over, put on without scruple upon the poll-book, upon the election return, put down without scruple during the election, of those who were qualified, and those who were not qualified; and that is the way this constitution in part has received its sanction.

But, sir, I think that we should take a very partial view of this subject, one very unsatisfactory to our judgment, if we were to isolate these facts which have direct relation only to the formation of this constitution, and leave out all the surrounding circumstances. It seems to me that the proper and the just mode of regarding this constitution is to consider it as one of a series of acts, and see if we can find that the whole action and operation of all those acts were to lead to one general purpose—that of maintaining by fraud and by falsehood the power and the government of the minority, and their offices to them against the will of the great majority of the voters. I say it is an act connected with all the other acts. The whole case is to be taken, and every part of it judged of in this connection.

Now, what was the first act? That is historical. We may all speak of it now, though we disputed it at the time. The first Legislature that was elected in Kansas under the organic act, was not elected by the people of Kansas. It was elected by persons who were intruders from abroad—who intruded themselves with arms in their hands, seized upon the ballot-boxes, put in their own ballots, driving away the legitimate voters, and elected the members to the Legislature. That is the way the government of Kansas was inaugurated. Those who had been driven from the polls, those who were opposed to the party that was installed in power by these means, conceived such indignation and such disgust that they proclaimed aloud, whether wisely or unwisely, that they renounced all obedience to this spurious government, as they called it. It is not material to me whether their complaints are well-founded and true, or not. I am endeavoring to depict the course of things, to show their motives and the motives of the persons who were thus installed into the territorial government. They came to their power by violence; they came to their power by fraud. That was the complaint of the opposing party in Kansas. They renounced their rule, they renounced their laws, refused to commit themselves in any way to their support, refused to go to any election afterwards. They said, "What is the use? This corrupt minority who have got into power, who have in their hands the means of controlling the election, who are not too good to do it, and who will do it, who have done

it, will practice the same means; we shall be again driven from the polls, or, if not, they, having the control of the elections, and of all the officers who conduct and manage them, will have what returns made they please. We will subject ourselves no more to the humiliation of attempting to execute a right which we know will be frustrated and defeated by fraud, or by force." Under these impressions, and with these feelings, which it is not my part here either to justify or rebuke, but simply to state the fact, they withdrew from the elections lest, by voting according to the laws passed by this corrupt Legislature, as they considered it, they should seem to acknowledge its authority and their allegiance to it.

Now, what would be the condition of the men who had been installed into power in this way? They would be pleased that their opponents had thus withdrawn themselves from the polls. In all the elections to be held afterwards, this power of the minority, however small, would be continued; as their enemies would not come up to vote, they would be re-elected and would retain and perpetuate their power. So they went on—the field abandoned by the majority—and the minority ruling everything in this way. Look at the evidences that are before you from those high officers lately returned from Kansas—Stanton and Walker. They tell you of frauds regularly perpetrated there; and, although they had thought before that the people were acting factiously, that they were acting seditiously, that they were acting rebelliously in attempting to withdraw themselves from this government altogether and to act for themselves, and that their complaints of fraud and imposition upon them in elections were rather affected for the purpose of giving color to their conduct than otherwise, yet when they went among the people and heard them, and learned all about the dealings that had been practiced, they could not doubt their truth and their sincerity in the resentment which they felt and in the conduct which they pursued. However unwise, it was sincere on their part.—They had been defrauded; they had wrongs enough to sting and humiliate them. This is what these officers say. I know nothing about it; we know nothing about it, except on the testimony. That the ruling minority party were capable of committing fraud, we know. They began in fraud. Has any gentleman here denied, is there any gentleman who discredits the history which we all have of the frauds practiced in the first election that was held in Kansas? However we might doubt this, however we might have disagreed, however we might have believed or disbelieved heretofore, have not every mist and doubt been cleared away from around this fact, and is there one here now to say that the right of election was not trodden down in the first election for a Territorial Legislature in Kansas, and that a minority government was not elected? That they have continued that government by fraud since, is shown at every step of their progress.

It was in the midst of this self suspension of the right of suffrage on the part of their opponents, that they called the convention by which this constitution was made. Look at the constitution itself. On its own face, does it not contain the amplest preparation for fraud, visible and apparent?

Look at the internal evidence marked on its face. They pass by all the sworn officials of the territorial government who had before conducted elections—they authorized, by the schedule to the constitution, President Calhoun to take this whole matter into his hands, to appoint the officers to conduct the elections, giving him control over that official body, and the appointment of them all; and the returns were not to be made to any permanent officer of the government, not to the Governor, but to this same Mr. Calhoun. He was to appoint the officers to conduct the election, receive the returns, count the ballots, and declare the result. Well, Mr. Calhoun has performed all this business!

Another thing: every human being, in respect to that part of the constitution which was submitted to the people, before he could vote for or against it, was required to swear that he would support that constitution when it was adopted. In that constitution, those who framed it well knew were provisions intolerable to all the free-State men in the Territory, and they would not swear to support it. They so believed and hoped and expected. This was under the show of a fair election. Not only have they secured all the advantages resulting from the appointment of the officers to conduct it, but, to leave their consciences more easy, these officers were not even sworn. There was no provision for that. But every man voting for the constitution, or that part of it submitted to him to vote upon, was required to be sworn beforehand that he would support that constitution. This, it was supposed, if nothing else, would keep off the free-State men.

It is said, in this testimony, that Governor Walker, from the time he went there, had been diligently persuading all the people of the Territory to throw aside this inaction of theirs, come into the elections, and participate in the Government. For this, Mr. Stanton says, Governor Walker became the object of utter hostility to Mr. Calhoun's party. They did not want conciliation. They demanded, as the same witness says, repression. They wanted penalty, not persuasion. They did not know what the result of this persuasion might be in the elections afterwards to take place on the constitution. It was necessary, therefore, to make provision against the possible effect of these persuasions and arguments of Governor Walker; it was, therefore, necessary to put in, though nobody opposed them, six thousand votes for the constitution, they believing that that was a majority of the greatest number of votes ever given on any occasion in the Territory, and so it is stated here. They just went beyond the line; and for fear of rendering it more monstrous, and the fraud more visible, they went just so far as the necessity demanded the fraud. They did not choose to use it superfluously. They rather husbanded it, to be used as the occasion might require, and no more than was required. I cannot shut my eyes to this fact. These preparations, then, in the schedule of the constitution, were made in anticipation of the vague dangers that were apprehended. It was greatly important to carry through this constitution, greatly important to preserve their authority under the constitution. There were two Senators of the United States to be elected. All the officers of the State

government were to be constituted. These were to be the reward of those who had labored.

These seem to me to be preparations made for fraud; and when I come to compare them with the action which took place afterwards, the design and the act, the purpose and fulfillment of it, make the proof perfect. The means of doing it, the means of facilitating it, are given in the constitution. The actual perpetration of it afterwards at the polls is seen. It is seen in the election upon the constitution. It is seen in the election of the 4th of January, for officers under the new constitution. There is where these frauds, lately developed, were practised to such an enormous extent. There is where these little precincts distinguished themselves.

Another fact may be noticed, that this convention to make a constitution were to meet, by law, in September, and go to their work. They met then. Did they go to work? No. Why did they not? There was an election of the Territorial Legislature to take place in the October following. They wanted to know the result of that election; to know how the land lay; whether all was safe or not; whether any point was necessary to be guarded in the constitution; whether there were any unexpected majorities rising up; whether there were any obstructions in the way of ordinary frauds. They wanted to see what was the character of the new Legislature, that they might meet the emergency and meet the exigency with any constitutional provision that might be necessary to perpetuate their power. They therefore adjourned to a day after the election. The Legislature was elected; and that Legislature turned out, notwithstanding all the frauds that were practiced, to be against them. What then? The Legislature being against them, now what is the provision they made in the constitution? The officers of election, and other officers of the Government, were, many of them, appointed by the Territorial Legislature. They thought, "Now, here has come in, in October, a Legislature opposed to us. What so likely but that they who have complained of frauds from Government officials, will now change the officers and change the mode of election?" What then? They declare in the schedule that all who are in office now, shall hold their offices; that all the laws in existence now, shall continue in existence until repealed by a Legislature which shall meet under the State organization under the constitution. That silences completely the Territorial Legislature, and paralyzes its power. That was a security against them, and left the convention and its party to take the chances at the future election to be held, by their officials, on the 4th day of January last, as provided by them, and then they were to make another final death-struggle for supremacy; and then, indeed, they did. I have seen the report of the commissioners lately appointed by the Territorial Legislature of Kansas to investigate the frauds. There this Government party did make efforts more than worthy of all their former practices in fraud, in order to secure the Legislature, which, under the constitution, would make Senators of the United States. It was here that Oxford, that Shawnee, that Kickapoo, distinguished themselves in the multiplicity of votes, feigned and fraudulent.



When you see such things as these in the constitution, when you see such things as these all around the constitution, when you see the same men who made the constitution rulers in the land during the whole time, do you not see that the frauds have been everywhere, that the imposition upon the people has been everywhere? And how can you exempt from the contagion (if there was nothing more than this general association from which to infer it) this constitution and those who made it? Judging from the positive internal evidence that exists in it, and the facts that surround it, I cannot. I believe that to impose it upon them, violates the right of the people to govern themselves. I believe this constitution is the work of fraud—fraud upon the rights of the people.

I do not undertake to defend the free-soilers for their conduct. It is not my part nor my province. I should agree, perhaps, with the President, that much of their conduct has been of a disreputable, disorderly, and seditious character. It may be that it deserves the epithet of "rebellion," which the President applies to it. I have nothing to do with that. I am not their advocate. I have disapproved of their conduct in many instances. There were many bad men among them, as I believe, but for them the law assigns its proper punishment. The majority of the people have their political rights, that remain, notwithstanding their legal offenses. It is in that point of view, it is in their political character as the people of a Territory, that we are now to regard them. Whether they be more or less guilty on one side or the other, is not the question. I fear that neither party could take the chair of impartiality and justice, and be shameless enough to attempt to administer rebuke to the other.

One great objection to their admission at all, is that they have not shown, by their conduct on any side, that they are altogether fit for association with the States of this Union. A little more apprenticeship, a little more practice of honest and fair dealing, a little more spirit of submission and subordination to law and authority, would be well learned by them, and fit and qualify them much better for citizens of the United States. That is my opinion. I have, however, spoken of their political rights as men, and it is not for me to sit in judgment to condemn and deprive them of the right of suffrage on one side or the other, because of frauds committed by one, or violence practiced by another. This is a political question.

It is said, however, that the series of legalities and technicalities, to which I have alluded, of a regular election, of a regular convention, of a submission to the people, and of votes of the people upon all these questions, have been regular; and what then? It is further said, on the other side, that all the people had a right to vote and those who did not vote forfeited their right to complain; and we are not to inquire whether there were any people who did not vote, or whether those who did vote voted fairly, and were entitled to vote or not. It is said we are precluded by the forms in which this transaction is enveloped; that the formal election, the formal certificate of election, the formal constitution certified—these formalities are enough for us, and that we are not permitted to look further; that we ought not to look

further. Sir, I do not think so. We are applied to now to admit a new State into the Union. The instrument which she presents as her constitution is opposed by the people from the same Territory. They say, "this is not our constitution; it is against our will; it is not only against our will, but it has been imposed upon us by devices and fraud. It is void for fraud. If it is not void for fraud, for that is rather a legal than a political term, we present these frauds and this opposition as a reason why you should not admit our Territory into the Union under this constitution."

That is the state of the question before you. The complainants admit all the regularities just as the President states them. Perhaps they admit the effect these forms would ordinarily have, but they urge other facts in opposition to the apparent evidence of the constitution itself, as I have before adverted to. A majority of the people have protested against it. The present Legislature, by its inquiries, have developed the vast frauds which were practiced in connection with, and in relation to, this constitution. They say, "do not accept it; do not admit us under it; send it back; let it be submitted to a fair vote of the people." Sir, upon such a complaint as this, are we not bound, in justice to that people, to examine the whole case? Can any Senator turn away and refuse to look at the testimony that is offered? Can he be justified in so doing by naked legal presumptions against positive truth?

Do not suppose that I would discard all formalities, or the fair presumptions resulting from them. In many cases, and to many of the transactions of society, especially to your courts of justice, they are necessary, and they subserve the purposes of justice. They were not made to sacrifice justice, but to uphold it and maintain it and protect it as an armor. That is the proper business of forms—not to crush down justice, but to promote it. We are not now sitting here governed by any technicalities. This is a grand national political tribunal, to judge according to our sense of policy and our sense of justice. That is our high province—not to be controlled by presumptions of law when we can have the naked truth. It is the truth that ought to guide; and for that we ought to look wherever we can find it; and where you find the truth on one side, and the fiction on the other, which is to be followed, the truth or the fiction? I take the fact; I take the truth; let the fiction return to those tribunals which are by law made subject to it. This is a question above that sort of argument. It is inquirable into. Else how can we judge that it is their constitution? It is the first time, I believe, that such a question has ever come up in the Senate of the United States. In all former applications for admission, there has been one thing about which there has been no question; and that was, the willingness to be admitted, and the constitution under which they desired to be admitted. There has been no question about the authenticity of a constitution, or about its expressing the true will of the people heretofore, that I know of. I am satisfied there has been none; but now that there is, we must inquire into the authenticity of the instrument offered to us; we must inquire whether it is better, on full consideration, to admit this



instrument and the State with it or not; and, in the exercise of that judgment, we are bound to look abroad for the truth wherever we can find it. I think, therefore, these matters are all fairly subject to our consideration.

Mr. President, convinced as I am from these imperfect views of the evidence in the case, that this instrument is not really the constitution of the people of Kansas, or desired by them to be accepted by you in their admission into the Union; believing that it is not their constitution; and believing moreover, as I verily do, that it is made in fraud and for a fraud; believing that these matters are inquirable into by us, and that the inquiry has led us to abundant light on this subject, I cannot, I will not vote for it. Viewing it as I do, with the opinions I entertain, I could not consent to her admission without violating my sense of right and justice; and I would submit to any consequence before I would do that.

Now, sir, what considerations are there, apart from these which I have stated, which could lead me to give, or could compensate me for giving, a vote against my sense of what was right and just? What advantage to our whole country, or to any portion of it, is to result from taking Kansas into the Union now with this constitution? Is anything to be gained? Is the South or the North to gain anything by it? I see nothing to be gained by it. I think there is not a gentleman here who believes that Kansas will be a slave State. Before this territorial government was made, many of the leading men of the South here argued that Kansas and Nebraska never could be slave States. By the law of climate and geography, it was said, they could not. So said my friend from Georgia, [Mr. TOOMBS,] and so said Mr. STEPHENS.

Mr. TOOMBS. Never.

Mr. HALE. Mr. Badger said so.

Mr. CRITTENDEN. Mr. KEITT and Mr. Brooks, of South Carolina, said so. The opinion was expressed by numerous southern gentlemen that Kansas could never be a slave State. It was for the principle that they contended; and the principle, the abstract principle, was a just one; namely, the right of the people of the Territories, when forming a State government, for admission into the Union, to frame for themselves such a republican constitution as they pleased, either excluding or admitting slavery.

Mr. HAMMOND. With the permission of the Senator, I will ask him, "Did I understand him to say that Mr. KEITT had declared Kansas never would be a slave State?"

Mr. CRITTENDEN. Yes, sir; so it is reported. Mr. HUNTER, of Virginia, said:

"Does any man believe that you will have a slaveholding State in Kansas or Nebraska?"

Governor BROWN, of Mississippi, said:

"That slavery would never find a resting place in those Territories."

Mr. DOUGLAS said:

"I do not believe there is a man in Congress who thinks it could be permanently a slaveholding country."

Mr. Badger, of North Carolina, said:

"I have no more idea of seeing a slave population in either of them than I have of seeing it in Massachusetts."

Mr. MILLSON, of Virginia, said:

"No one expects it. No one dreams that slavery will be established there."

Mr. Frederick P. Stanton, of Tennessee, said:

"The fears of northern gentlemen are wholly unfounded. Slavery will not be established in Kansas and Nebraska."

The late Mr. Brooks, of South Carolina said, in his speech of the 15th of March, 1854:

"If the natural laws of climate and of soil exclude us from a territory of which we are the joint owners, we shall not and we will not complain."

Mr. Butler, of South Carolina said, on the 2d of March, 1854:

"If two States should ever come into the Union from them, [the Territories,] it is very certain that not more than one of them could, in any possible event, be a slave-holding State; and I have not the least idea that even one would be."

Mr. Keitt, of South Carolina, in his speech of the 30th March, 1854, quoted Mr. Pinckney, of his own State, that—

"Practically, he thought slavery would not go above the line of thirty-six degrees and thirty minutes by the laws of physical geography, and therefore, that the South lost no territory fit for slavery."

This is all the authority I have.

Mr. GREEN. I wish to inquire what book the Senator reads from. What is the title of it?

Mr. CRITTENDEN. It seems to be a book written with the most downright Democratic propensities and purposes. [Laughter.] It is "An Appeal to the Democracy of the South, by a southern State-Rights Democrat." [Laughter.]

Mr. MASON. I suppose the pamphlet is anonymous. No name is given.

Mr. CRITTENDEN. Yes, sir.

Mr. MASON. The name of the writer of the pamphlet is not given.

Mr. CRITTENDEN. Will the gentleman take it? It contains a great deal of good Democratic reading. [Laughter.] The writer of it thought he was doing great service to the Democratic party.

Mr. HAMMOND. I wish to say that Mr. Keitt quoted that passage from Mr. Pinckney's speech on the Missouri question, which had been quoted on the opposite side of the case previously. His object in quoting it was to show that Mr. Pinckney did not support the Missouri compromise upon principle, but he did not indorse the sentiments expressed by Mr. Pinckney in that extract.

Mr. CRITTENDEN. I accept the explanation. Certainly I had no intention to misrepresent any gentleman by reading the statements expressed in this pamphlet. I say it was not anticipated from the first that Kansas would be a slave-holding State. What is the South to gain now by having it admitted? It may gain a triumph in the admission of this constitution—admitted against the will of the majority of the people. It is a triumph, but is it not a barren one? Is it a triumph worthy of the South? It will produce nothing but increased bitterness and exasperation, perhaps, on the part of those against whose will it is forced, not only in the Territory, but elsewhere. It may give new exasperation to the slavery question; new agitation, which God forbid. It would be a victory without results,

without profit, barren, sterile:—as to all the ordinary and beneficial fruits, there is none. I do not know how anything is to be gained to the South, supposing, as I verily believe, and as every gentleman here believes, that it cannot be a slave State; that there is a majority there opposed to it, and who will put it down. Pass this, and we may have a few years longer of exasperated struggle and exasperated agitation in the country. That is all the consequence of the barren victory which would be obtained by admitting Kansas with this constitution. That is not a fruit, I think, which any one would wish to gather. Now, if you attempt to enforce it, we are told by Mr. Walker—I know nothing about it, but from all that he and Mr. Stanton tell us, and they are Democratic witnesses—there is danger of resistance and danger of rebellion.

Where is the necessity, then, for our doing it now? Can we not resort to some other means by which we may avoid all these consequences of exasperation, of danger, of resistance, of tumult, or of agitation, upon this subject; and end this contest in a short time by authorizing the people of Kansas, under the high mandate of this Government, to form for themselves a constitution, if they want to come into this Union—a constitution fairly to be made, and fairly to express the will of the people. It defers the subject but a little while. Is it not better to do that; is it not better to suffer the evils we have, than to fly to others we know not of? I think every prudential consideration is in favor of our forbearing to enforce this constitution on the people of Kansas, and of our affording them an opportunity of making their views fully and perfectly understood. This will be in accordance with the generous principles and policy that the South has pursued heretofore.

The Kansas-Nebraska bill was recommended to the South, chiefly, by the repeal of the Missouri compromise, and the recognition of the right of the people of a Territory, when framing a constitution of State government for themselves, to be "perfectly free" to frame it as they pleased—admitting or excluding slavery, and regulating their domestic institutions in their own way, subject only to the constitution of the United States.

Every citizen has an equal interest and right in Territories belonging to the people of the United States; and the result of this equal right seems to me, to be, that, where there is no positive law to the contrary, any citizen may lawfully carry his slaves into those Territories, and may lawfully hold them. They were his slaves in the State from which he emigrated, and must remain his, till divested of his right, by law—just as an apprentice, under the same circumstances, remains bound to his master.

My opinion is, that the repeal of the Missouri compromise was a blunder; but I concur in the principle that the people of our Territories, when they come to form a constitution for themselves, have a right to form it as they please. I am now acting upon that great principle of popular rights. I feel myself bound to give the benefit of it to the people of Kansas. Let the majority make such a constitution as they please. That is the great American principle, that rises above all others. Let

them govern themselves, and as the majority decide, so let the constitution and so let the laws be. I think we are infracting that great principle—the principle of the South itself, on this very identical subject, by forcing this constitution, at least of doubtful authenticity, upon the people. If there is a majority in favor of it, it is not much trouble for them to ratify it. If there is a majority opposed to it, they are entitled to have their will and their way. They are entitled to that upon principle; they are entitled to it by the express pledges of the Kansas-Nebraska law.

Sir, I feel that I have already occupied a great deal of your time—more than I was entitled or expected to do; and yet there are some general topics upon which I wish to say something, though not so immediately connected with the direct question before us.

Mr. President, I am, according to the denominations now usually employed by parties in this country, a southern man. I have lived all my life in a southern State. I have been accustomed from my childhood to that frame of society of which slavery forms a part. I am, so far as regards the necessary defense of the rights of the South, as prompt and as ready to defend them as any man the wide South contains; but in the same resolute and determined spirit in which I would defend any invasion of its rights, and for which I would put my foot as far as he who went furthest, I will concede to others their rights, and I will maintain and assert them. He who knows how to value his own rights will respect the rights of others.

When the Missouri compromise was abolished, great fears were excited in the North, and some vague hopes entertained in the South, that slavery might be established in Kansas, and extended in that direction. I did not believe it. I believed that the Missouri compromise line fixed in 1820, was about that territorial line, north of which slavery, if it could exist, would not be profitably employed; and our experience since has shown that the wise men who made that compromise judged rightly. I believed that the idea of making Kansas a slave State was a delusion to the South; that her hopes would never be realized, if she entertained such a hope as that. I thought, therefore, it would have been better, without examining scrupulously into its constitutionality, to let the Missouri compromise stand. I regretted its repeal. I did not believe the South would gain anything by it, or that the North would gain by it.

That compromise was a bond and assurance of peace. I would not have disturbed it. It was hallowed in my estimation by the memory of the men who had made it. It was hallowed by the beneficial consequences that resulted from it. It was hailed, at the time it was made, by the South. It produced good, and nothing but good, from that time. Often have you, sir, [addressing Mr. Toombs,] and I, and all of the old Whig party, triumphed in that act as one of the great achievements of our leader, Henry Clay. It was from that, among other things, that he derived the proudest of all his titles—that of the pacificator and peace-maker of his country. We ascribed to him a great instrumentality in the passage of that law, and over and over again have I claimed credit and honor for him for this act. This, for thirty



years, had been my steadfast opinion. I have been growing, perhaps, during that time, a little older, and am a little less susceptible of new impressions and novel opinions. I cannot lay aside the idea that the law which made that line of division was a constitutional one. I believed so then. The people since have generally believed it. I must be permitted to retain that opinion still; to go on, at any rate, to my end with the hope that I have not been praising, and have not been claiming credit for others for violating the Constitution of their country.

Sir, the men who passed that measure were great men; they were far-seeing men. Without argument now, I am content to rest my faith upon the authority of those great men—Clay, Pinckney, Lowndes, President Monroe, the last of the patriarchs of the Revolution, with his learned and able Cabinet—and then, what is more than all, thirty-five years of acquiescence in it, and peace under it, in these States. Whatever quarrels you may have had about it in Congress, there was always enough to uphold and sustain that law; and never, until 1854, was it repealed, or its constitutionality questioned, that I know of. I regretted its repeal, because I feared that it would lead to new agitations and new dangers. Has it not? What has been our experience?

The authors of the measure which repealed that compromise—honorable and patriotic I know them to be, many of them my personal friends—promised themselves from it greater peace and greater repose by localizing the slavery question, as it was said. This act was to localize the question of slavery, and all agitation was to be at an end. It was to give peace to the country. The President in his message at the commencement of this session, or in his special message—I do not know which—imagines the country to have been in great agitation on the subject of slavery, when the Kansas-Nebraska act came and put a stop to it until, some time afterwards, it was revived. Why, sir, exactly the contrary seems to me to be the true history of the transaction. We were becoming tranquilized under the compromises of 1850 in addition to the Missouri compromise; all was subsiding into submission and acquiescence, when, to obtain a greater degree of peace and secure us for the future against all agitation, this bill of 1854 repealing the Missouri compromise was passed. What has it produced? Has it localized the question of slavery? Has it given us peace? All can answer that question. It has given us anything but a cessation of agitation. It has given us trouble, nothing but trouble. That has been the consequence of it so far.

I am as anxious now as any man here to close up this scene. I would vote for the admission of Kansas upon almost any terms that would give peace and quiet. If I thought this bill would do so, I should vote for it. I would suppress all scruples for the sake of that peace. If I was sure such would be its result, I would vote for it, thinking myself justified by the price that was to be paid—the peace of my country and the restoration of good will among my fellow-citizens. I do not hope for it. I fear further trouble. We are again told that this will have the effect of localizing the question of slavery, and that we

shall be no more troubled with it; that the mischief and clamor, and agitation will all be confined to the limits of Kansas. This is the same hope that was disappointed when the Kansas-Nebraska bill was passed. The same hope was indulged in then, and since then there has been nothing here but agitation on the subject increasing with every day.

Again, we have the idea of localizing it presented. Now, sir, if it is to be debated anywhere, it will be debated here; and, perhaps, if it is to be debated anywhere, it is best that it should be debated here; because we might hope, Mr. President, that in this body it would be debated with a spirit of moderation and conciliation that would deprive it of many mischievous consequences if it were agitated and debated among men without our years, without our responsibilities, and without the restraints which our condition and our knowledge impose upon us. Even here we do not debate it in the right way. We allow ourselves to become too much excited about it. To this great country, what is Kansas and this Kansas question, and the two or three hundred slaves who are there, that you and I and all the American Senate should be here day and night, and using such language of vituperation and invective on this subject as we often do? Look at our great country, and the great subjects which claim our attention as her legislators; look at them all in their majesty and their magnitude, and then say, how little, pitiful, in comparison, is the question about which we are making so much strife and contention.

On this subject, and on many others, it seems to me that it becomes us, of all the citizens of this great Republic, to set to our fellow-citizens examples of moderation and conciliation. What good does the mutual charge of aggression, often fiercely repeated? What good do these invectives? Especially let me say to my friends of the North, why indulge in invectives of the most reproachful character, upon those who, in fourteen or fifteen States of this great country, are slaveholders? Does that give you any cause to traduce them? Can you not live content with the institutions which please you better, and leave these fellow-citizens, who have just the same right to adopt slavery that you have your institutions, to enjoy their liberty in peace also? Is there anything in the difference of our institutions which ought to make us inimical to one another? How was it with our fathers? Did not they live together in peace and harmony? Did not they fight together? Did not they legislate together? Did they ever abuse and reproach each other about the question of slavery? Never, that I have read of. Why is it that we cannot do as they did? Have we degenerated from those fathers, or have we grown so much better and purer than they were? I doubt whether we are any better; and I do not believe, notwithstanding all that is said about progress, that we are at all more sensible than those fathers who made the Constitution of the United States, and laid the foundation of this great Government. They gave us an example of brotherhood; and when we look at all that connects us, all that unites and makes us one people, how much more powerful would its influence seem to be to connect us together, than the question of

slavery and anti-slavery to divide us? We are united by circumstances of which we cannot divest ourselves. We are united in language, in blood, in country, in all the memories of the past, in all the hopes of the future. This is our connection, leading and pointing to the brightest destiny that ever awaited any people. All the unnumbered blessings of the future are in full prospect; but there is this little, this comparatively small matter of contention, that we seem disposed to nurse up into continual occasion for philippics and for reproaches. This is not the right temper with which to regard the subject. Crimination and recrimination is not the way to strengthen our Union—that Union of brotherhood, of good will, of co-operation for all great national purposes, which our fathers formed.

I was gratified to hear comparisons made of the mighty resources of the different sections of this country. It was a proud exhibition. The honorable Senator from South Carolina [Mr. HAMMOND] gave us, in a very interesting and eloquent manner, the mighty resources of the South. They are beyond estimate—beyond calculation. This is replied to by a gentleman from the North, who gives us the mighty resources and the mighty power of New England and the non-slaveholding States. Well, sir, if the conclusion which might be drawn from it was true, that each of those sections would by itself make a mighty country and a country that any one of us might be proud of, what a magnificent country is made when we put it all together! What a magnificent abode for man, such as the Almighty never gave to any other people, and never placed on the surface of this earth!

It seems to me the most natural union in the world—the South, with her great and her rich productions, while the North abounds with ingenuity, labor, mechanical skill, navigation, and commerce. The very diversity of our resources is the natural cause of union between us. It would out do for us all to make cotton, nor would it do for us all to work in your manufactories. Nature seems to have organized here this country, adapted to a union of people North and South. Nature has given her sanction to the Union. Nature has traced that Union, and you alone disturb it. Gentlemen, you alone disturb it by making this subject of slavery the cause of dissension. The dissension has been kept up, though we but seldom come to any practical question that calls upon us to act on the subject. Now, if we were through with this petty Kansas affair, what a summer sea of boundless expanse lies before us, where there is nothing but repose. There is no other territory that you can dispute about in my lifetime, or the lifetime of any man here. This is the last point on which a controversy can probably be made. We have gone through many difficulties on this subject. Now we have reached the last of it, the least of it. Let us settle this matter in peace; let us settle it in good temper; and I see nothing before us but a long period of repose, and, I hope, of mutual conciliation. Of one thing I am certain, that crimination and recrimination between the North and the South, the getting up and maintaining of sectional feeling, sectional passion, sectional prejudices, can do no good to any section; and there is not one Senator here who

does not recognize and feel all this as much as I do. I am certain of it.

My vote on this subject, sir, has nothing sectional in it. The only difficulty I have in voting is, that this is regarded by some as a sectional question; and I am on one side of that section, and I am voting for the other side of it, if we divide on it as a sectional question. Now, I do not regard it as a sectional question. My allegiance is not to any particular section. I do not want to know any such thing as a section in my conduct here. I want to be governed by a constitutional spirit, and a constitutional and a just principle, in all I do, no matter whether it relates to the North or to the South. I do not want to increase the sectionality which exists in the country by placing myself or my vote upon it so far as regards this question. I want to wipe out that sectionalism. I wish that no one here would vote upon it as a sectional question. I do not. I vote upon it as a Senator of the United States of America. That is my country, and my great country. The Constitution of the United States intended to wipe out all these lines of division and sectionalism. It is we, we, that disturb our own Union. It is we that make sections; it is we that make sectional lines to divide and distract the country, whose Constitution, whose present interest, whose future hopes, all tend to unite us.

There are some doctrines which have been advanced here with which I disagree, and upon which I will briefly express my views. Some gentlemen have argued, and they have the authority of the President to sustain them, that the Kansas-Nebraska act gave all the authority that is usually conferred by what is called an enabling act on the people of a Territory. I never considered in so. I do not believe it is to be considered so. Some gentlemen, on the other hand, maintain that, under the Kansas-Nebraska act, the convention were bound to submit the constitution to the people for the popular suffrage; indeed, that it is the right of the people to have every convention submit every constitution to them. I do not agree to that doctrine. The people are too sovereign to be required to do that. They can confer upon a convention the power to make a constitution that shall be good without reference to any other power. The sovereignty over the Territory is in this Government. It belongs to the people of the United States, one and all. The people of the States own it; and they are the real sovereigns of the Territory, and we, as their representatives. They have no more power in the Territory than we give. They have no government but what we give. It is not in the nature of things that they should have. All squatter sovereignties, and sovereignties of all sorts, vanish before the sovereignty of the people of the United States.

But the President says, in reference to this Kansas constitution, that although it contains a provision that after 1864 a convention may be called to change it, the people can, nevertheless, change it before that time. That is to say, the people, by their "irresistible" power can at any time, notwithstanding the provisions of their constitution to the contrary, change it as they please. Sir, the President of the United States is very high authority; but it is, in my humble judgment, a very dangerous



doctrine and a very untrue one. The people cannot bind themselves by a constitution! I thought that was one of the great virtues and purposes of a constitution. We admit them to be sovereign. Why cannot they make what sort of a constitution they please? The constitution which sovereignty makes, in all its parts and in all its purposes, must be the rule of conduct for all. It cannot be abolished, except in the manner prescribed and pointed out in the constitution itself, if any manner is prescribed.

If the President's doctrine on this subject be true, what becomes of the Constitution of the United States? Instead of following the mode of amendment prescribed in the Constitution, the people, by their 'irresistible' power, may in any other manner, at any time, change the whole frame of our Government. There is not a State constitution in the Union that does not impose some restraint as to the manner of change. What would a constitution be if it were just as liable to change as any ordinary act of the Legislature? It would lose its character. Those who talk to the people about the unlimited and illimitable power they possess are teaching a dangerous doctrine. That is a sort of sovereignty which the people cannot exercise. It may be made very flattering to their ears, but it is impracticable in the nature of things. It cannot be exercised at all. The people must exercise their sovereignty through agencies. They must exercise it through representatives and governments; they only exercise it safely through constitutions. If they could not make constitutions bind themselves their sovereignty never would be safe. If it were not invested in a constitution, it would be constantly escaping into the hands of some of those gentlemen who could talk most eloquently to the people about their *irresistible sovereignty*. That would be the end of that sort of sovereignty in the people.

The people must understand that their sovereignty, their practical sovereignty, is to be exercised

through representatives and delegates, over whom they are to hold the proper control; and to hold that control, and to fix and make permanent and operative their sovereignty, they must put it in the form of a constitution. That is the only security for popular sovereignty. Therein it exists, and therein alone can it exist practically. It is not true that the people cannot bind themselves, and are not bound, by the restrictions of their constitution. They may rebel against their own constitution; they may violate their own law and constitution, just as they could violate the law or constitution of any other people; but it does not follow that, because they could do that, they have not created a political obligation on themselves by a constitution only to amend that instrument in the guarded, temperate, gradual method which the constitution may have provided for and prescribed.

Sir, I am sorry to have occupied the time of the Senate so long. I can say, with the President of the United States, that on this important occasion I have endeavored to do my duty, with a full sense of my responsibility to my God and to my country. Under the conviction that the best results to be obtained under the present circumstances, unless some material amendment can be made to the bill, will be attained by rejecting this constitution, I shall give my vote against it; but so anxious am I to conclude this subject, that I intend, before it is finally acted upon by the Senate, to propose an amendment. This would not be the proper time to offer it; I am not prepared now to offer it: but the effect of it will be to admit Kansas into the Union upon condition that this constitution of hers be submitted to a fair vote of the qualified electors of Kansas, to be ratified by them; and if so ratified, the President, on information of the fact, shall proclaim it a State of the Union without further proceedings; and, if it be not ratified, to have a new constitutional convention convened. My amendment will be an enabling act in effect, but admitting Kansas for the present.



## MR. CRITTENDEN'S REJOINDER TO MR. TOOMBS.

MR. CRITTENDEN. I purpose to occupy a few moments to correct a mistake which I believe is rendered necessary by the remarks of my friend from Georgia. I have listened to him with great pleasure, and have cause to thank him for much that he has said.

I knew, sir, that Mr. Clay was not the author of the Missouri compromise; I knew that he did not draw the bill; but I knew from his own declarations in conversation, and in his speeches that he did approve and concur in its passage. He gave it his sanction. He thought there was nothing unconstitutional in it. I have been brought up in the opinion that it was not only constitutional, but one of the most beneficial acts that had ever been passed by Congress. It produced you, sir, a revenue of peace and good-will among the people of the United States, and that is above all price. Whatever sanction it may have failed to derive from the names of the great men who passed it, it has received abundantly from the people of the United States, who, for the thirty odd years that it remained on our statute book, gave it their approval and support. During all that period it gave peace to the country. It was for that I valued it.

I hailed that compromise when it was first made. I have cherished it ever since. It had become fixed in my mind, as part and parcel of our political system. I regarded Mr. Clay, as did the whole country, as entitled to the credit of that great measure. And it was for this that his countrymen conferred upon him the proudest and the noblest of his titles—the pacificator of his country.

Sir, I have not been able to cast away these impressions. I admit the Supreme Court to be the great arbiter, as the gentleman asserts, and while I differ from it, I do not the less admit its constitutional and supreme power in all the matters that come within its jurisdiction, and I am not wanting in confidence and respect for it. But yet we cannot always yield up our long-settled convictions, even to the authority of that high tribunal. I find myself now in that condition, and I must be permitted to retain the opinion long established in my mind, that the Missouri compromise was a constitutional act.

My friend [Mr. Toombs] has said that some gentlemen seemed disposed to give no confidence whatever to the action of any of the Territorial Legislatures of Kansas until they fell into the hands of the Black Republicans. Certainly he cannot intend such an imputation for me? [Mr. Toombs signified by a shake of the head that he did not.] I regard it merely as the Legislature of the Territory—the actual Legislature. How its members may be divided in politics, I do not know; nor do I care; nor was it at all material for my purpose. It is enough for me that it is the Legislature

of the Territory, and that it appointed a vote to be taken upon this constitution on the 4th of January. The vote was taken, and the result was as reported to us. I have heard nothing to impeach that vote, nor any single fact alleged against it. The result of it was a majority of ten thousand against the constitution. Certainly those ten thousand have at least as good a right to be claimed against it as the six thousand returned as having voted on the 21st of December, have to be counted in favor of it. That was my object. It was to show that there was a majority against this instrument, and assuming all this action to be equally legitimate, the members of the convention had no more right to order a vote to be taken by the people on any part of the constitution than the Territorial Legislature had to order an election to be taken on the whole constitution. Both proceeded from organized recognised bodies, one the Legislature, the other the convention. When, therefore, the common appeal is made to us, and the constitution is brought before us, it seems to me that we ought equally to take into consideration both these facts. Furthermore, I adverted to the evidence going to show that from the six thousand in favor of the constitution there were many spurious and fraudulent votes to be deducted.

Mr. President, I acknowledge that forms are not only useful, but, in many cases, necessary. I agree that if at an election two-thirds of the people stay away from mere apathy or negligence, the votes of those who do act, and do vote, must be effectual, and must control. I agree, also, that the return is a necessary form, and that the revision of that return is subject only to the particular authority appointed for it, and when that is done, there is an end of the case—because there is no further tribunal to which an appeal can be taken; but I supposed and argued that when this constitution was presented before us, the supreme power, called upon now to recognize the validity of these acts—called upon to recognize what was the will of the people, in respect to them, we have a right to look to all the evidence, as well to that which is furnished in form as to that which impeaches it for fraud.

I have spoken on these conclusions, and I shall act on them in voting against the acceptance of this Lecompton constitution. My friend, [Mr. Toombs] I have no doubt, in perfect sincerity, regrets that my conclusions have forced me to this course; but I have followed my convictions, and I mean to do my duty as I understand it. I confess it is painful to me to differ with such a friend on any occasion so important as the present.

Mr. President, I am not wanting, I think, in those feelings of our nature which connect us with our neighbors. Although we have a common coun-

try to look to, and ought to have a common patriotism which would embrace the whole, our natural affections and our natural feelings bind us more closely to those with whom we are more immediately associated, to whom we are more nearly assimilated in manners—customs, and institutions—aye, peculiar institutions. I am not wanting in those sympathies; but what is my duty as one belonging to a particular section, by his nativity, and by his residence—what is my duty when a great question of this sort comes up? What is my duty to those neighbors, to whom by natural sympathies and affections I am most bound? Is it not my duty in this house of our common councils to give the best counsel and advice I can, or am I to inquire whether this is to be regarded as a sectional question, and follow whatever course is indicated by a majority of its sectional members? Is it not rather my duty to my friends to give them the best counsel I can? I want to see the South always right. How am I to accomplish that? By advising always what my best judgment thinks is right, and endeavoring to prevail upon her to take that course. Is not that my duty? Is not that my duty to my common country, and more especially is it not my duty to those with whom circumstances more nearly connect me? I have done that. I should have been gratified if the South had taken the same view of this subject that I have. I am sure she would have lost nothing by it. The question of slavery is not in the case. I think there is not one gentleman here who entertains the hope that Kansas can ever be really a slave State. If it be made so, it will continue only for a moment, a little feverish moment, filled up with strife and angry controversy. No gentleman here believes it will really and permanently be a slave State. There is nothing then to be gained by the South, as I regard the subject. The element of slavery is only thrown in for the purpose of arousing feeling on the one side or the other. It is no real element in the question before us, because no man has any hope that Kansas will be a slave State. We learn that from every source. The hope of it was disclaimed before the Kansas-Nebraska bill was passed; that view is now turned into conviction by all that has occurred since, and there is nobody who deceives himself so much, or would deceive the South so much as to tell her that Kansas will be made a slave State by the adoption of this constitution, except it may be for that miserable and feverish period to which I have alluded, and which would be filled up in a struggle that could serve only to exasperate parties and make the contest there more fierce than it has been.

If the South could have taken the view of the case which I have taken, it seems to me it would have been better for her. Then she would say, "the South scorns to take advantage of the little circumstances that might enable her to press her claims upon a reluctant and unwilling people—press the claim to impose slavery against their will; we snatch at no such accidental advantages, we see that the question is determined partly by climate, and more certainly and decisively by the majority of the people; the determination has been against slavery; we stand up in our justice and in our honor always untarnished, and constituting our great strength as Commonwealths and States; and we say we will make no strife about

it." If this element of slavery could be discharged out of the case, put out of our minds, put out of our debates, and we could look at this question as it is presented to us, I think there is no one here who would be willing to give his sanction to an instrument which is so stained with fraud, and so manifestly in violation of the rights of the people of Kansas.

Why need we of the South be impatient and anxious to hasten the admission of Kansas into the Union? Whatever constitution you put upon them now will not last; but you will have two Senators immediately from there. Should the South be in a hurry to have two more such Senators here as you would now get from there? But these are small matters. If the South could view this subject as I do, if they could have looked at this constitution and the circumstances from which it had its origin, and those which attend it, as I do, they would have acted the very part which I have indicated; they would take no ignoble advantage; they would occupy no ignoble position of standing upon little points and nice estoppels. No, sir, the South would say—it is in her character, in her spirit to say so—we go upon great principles, and we go for the truth. Occupying that position, she would have stood proudly erect, with justice and honor seated upon her brow. That is her natural and accustomed attitude, and in that attitude I love to contemplate her.

Sir, gentlemen of the South from whom it is my misfortune to differ on this occasion, will do me great injustice to suppose that it was my purpose, in anything I have said, to question or impugn the purity of their motives. They but follow their honest convictions, as I follow mine. I have endeavored to perform my duty as a Senator belonging to the same section; my opinion and advice have been given frankly and independently; but, I hope without any presumption. I devoutly hope that whatever measure be adopted, though contrary to my opinion, may turn out to be that which is most beneficial to our country. I choose to be in the wrong, rather than that my country should suffer from my error.

I am neither of the Democratic nor of the Republican party. I wear no party shackles. I am here as the Senator of "Old Kentucky"—brave and noble old commonwealth. My ambition is to act in her spirit and by her inspiration. I did not come here to act in the character of a partisan. Long service and experience in public affairs have divested me of much of the misconception, the prejudice and passion that belong to the partisan; and upon lately taking my seat here, probably in the last term of my public service, it was my intention and my hope to act rather the part of a patriot than that of a party man.

I am a true son of the South; may prosperity fill all her borders, and sunshine forever rest upon her head. But for all this, I do not love the Union the less. I am a true citizen of the United States; I claim the whole of it as my great country; and for the preservation of that Union which makes it so, I will always be ready to say and to do whatever in me lies. It is in this spirit, sir, that I have endeavored humbly to do my duty—my duty to the South, and my duty to the whole country.

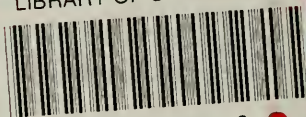








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